IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1246 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI AMRUTLAL JOSHI

Versus

BALASHANKAR AMRUTLAL JOSHI

Appearance:

1. Civil Revision Application No. 1246 of 2001

MR DC SEJPAL for Petitioner No. 1

RULE SERVED BY DS for Respondents No. 1-2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 13/12/2001

ORAL JUDGEMENT

#. Heard learned advocate for the applicant. Rule is served to respondents.

#. The facts of the case are, the present petitioner

plaintiff filed Regular Civil Suit No.4/1999 in the Court of Civil Judge (J.D.) Liliya, Dist. Amreli on 17.7.2001. The plaintiff - present petitioner filed an application before the Civil Judge (J.D.) Liliya that the suit filed by him was defective and that the original owner of the land was not joined as a party. The plaintiff further declared that to this effect the suit was likely to fail and, therefore, asked permission to withdraw the suit with liberty to file fresh suit. The learned Judge passed the order on the same day. That for the reasons mentioned in the application permission to withdraw the suit was granted. Thereafter, the plaintiff filed fresh suit wherein the present respondent objected on the ground that vide order dated 17.7.2001 the Court of Civil Judge (J.D.) only granted permission to withdraw the suit and that the plaintiff did not file any withdrawal purshis and that suit remained on the file of Civil Judge (J.D.) and that fresh suit filed by the present petitioner was barred by res judicata. Thereupon, vide Ex.32 in Regular Civil Suit No.4/1999 in the Court of Civil Judge (J.D.) Liliya the present petitioner original plaintiff presented a withdrawal purshis and asked the relief to withdraw the suit. On 18.9.2001, however, the Civil Judge (J.D.) Liliya after hearing the parties rejected the application Ex.32.

#. In fact, vide application dated 17.7.2001 when this petitioner - present plaintiff filed an application for permission to withdraw the suit on condition of filing fresh suit and while the learned Civil Judge (J.D.) granted the said prayer to the plaintiff the suit must be considered to have been withdrawn by the plaintiff with liberty to file a fresh suit. It is neither provided nor logical that the plaintiff should file again an application that the plaintiff withdraws the suit and thereupon only the suit is required to be treated as withdrawn and disposed of. In this case, in fact, vide Ex.32 after filing application on 17.7.2001 the plaintiff declared that he withdraws the suit. Even then the learned Judge, said that withdrawal purshis and seeking permission to withdraw suit both were different things and therefore Ex.32 came to be rejected by the learned Civil Judge (J.D.) Liliya. This Revision Application is filed against the above said order.

#. As said above, when request of the plaintiff was granted by the learned Civil Judge (J.D.) Liliya that the plaintiff was allowed to withdraw the suit with condition to file fresh suit the suit itself stands withdrawn, though the purshis Ex.32 to actually withdraw the suit was also filed by the plaintiff which was erroneously

rejected by Civil Judge (J.D.) Liliya at Amreli on 18.9.2001. On reading the application filed by the present applicant on 18.9.2001 and the application Ex.32, it clearly appears that the learned Civil Judge (J.D.) has permitted the plaintiff to withdraw the suit with liberty to file the fresh suit and suit stands withdrawn and disposed off.

#. The compounding effect of the order passed on 17.7.2001 and an application filed by the present petitioner at Ex.32 is that Regular Civil Suit No.4/1999 stands withdrawn with permission to the plaintiff to file the fresh suit and in this view of the matter, the order passed by the learned Civil Judge (J.D.) on 18.9.2001 below Ex.32 is set aside and Exh.32 is granted and the suit bearing Regular Civil Suit No.4/1999 is disposed of as withdrawn with permission to plaintiff to file a fresh suit.

#. In this view of the matter, this Revision Application is allowed. Rule is made absolute.

(J. R. VORA, J.)
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